

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 07-0583P
Corporate Income Tax
For the Period Ending March 17, 2006**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Tax Administration—Due Date for Filing.

Authority: IC § 6-3-4-13; I.R.C. § 1362.

Taxpayer argues that the due date for filing was extended because of federal law regarding consolidated corporate income tax returns.

II. Tax Administration—Interest.

Authority: IC § 6-8.1-10-1.

Taxpayer protests the imposition of interest on its tax liability.

III. Tax Administration—Penalty.

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the imposition of a late payment penalty on its tax liability.

STATEMENT OF FACTS

Taxpayer is a corporation. From January 1, 2006, to March 17, 2006, Taxpayer was an S corporation.

On March 17, 2006, Taxpayer's shareholders sold their shares to an unrelated corporation. Taxpayer became part of the unrelated corporation's consolidated corporate income tax return.

On March 14, 2007, Taxpayer filed a corporate income tax return for the period from January 1, 2006, to March 17, 2006. The Indiana Department of Revenue ("Department") determined that the return was filed late and assessed penalty and interest. Taxpayer protested the assessment. This Letter of Findings results.

I. Tax Administration—Due Date for Filing.

DISCUSSION

Taxpayer protests that it filed its Indiana corporate income tax return in a timely manner. In particular, Taxpayer notes that federal consolidated corporate income tax regulations allowed for the filing of Taxpayer's short-period S corporation return on March 15, 2007.

IC § 6-3-4-13(g) provides that an S corporation income tax return is due on the fifteenth day of the third month after the close of the S corporation's taxable year. Under I.R.C. § 1362(d)(2)(B), the date the S corporation ceased to be eligible to be an S corporation was the end of Taxpayer's year. Therefore, Taxpayer's year as an S corporation ended on March 17, 2006—the date on which Taxpayer's shares were sold to a C corporation and therefore Taxpayer became ineligible for S corporation treatment. The return for that taxable year was due for Indiana on June 15, 2006. Therefore, the return was not timely filed under Indiana law, notwithstanding the provisions of federal law.

FINDING

The due date for Taxpayer's return was June 15, 2006.

II. Tax Administration—Interest.

DISCUSSION

Taxpayer protests the imposition of interest on its payment. Under IC § 6-8.1-10-1(b), interest was due on the unpaid tax liability if the liability was paid after the due date for the return. Per the discussion above, Taxpayer's due date for the return was June 15, 2006. Taxpayer did not remit the tax until March 14, 2007. Therefore, the payment of tax was late and interest was due. Under IC § 6-8.1-10-1(e), interest cannot be waived.

FINDING

Taxpayer's protest is denied.

III. Tax Administration—Penalty.

DISCUSSION

Taxpayer also protests the imposition of the ten percent negligence penalty on Taxpayer's failure to file its return and remit its tax in a timely manner.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, 45 IAC 15-11-2 further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary

reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Notwithstanding the determination that Taxpayer's return was filed after the due date, Taxpayer has provided sufficient information to conclude that it acted with reasonable care. Thus, Taxpayer's penalty for late filing and payment of tax should be waived.

FINDING

Taxpayer's protest is sustained.